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5 Attorneys for Plaintiff
Michael Zeleny
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9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 MICHAEL ZELENY,

12 Plaintiff,

13 vs.

14 GAVIN NEWSOM, *et al.*,

15 Defendants.
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Case No. CV 17-7357 RS

Assigned to:

The Honorable Richard G. Seeborg

**DECLARATION OF DAMION
ROBINSON IN SUPPORT OF
PLAINTIFF'S MOTION TO CONTINUE
TRIAL AND PRE-TRIAL DATES**

Date: August 8, 2019

Time: 1:30 p.m.

Courtroom: 3, 17th Floor

Action Filed: December 28, 2017

Trial Date: November 18, 2019
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1 I, Damion Robinson, declare:

2 1. I and my law firm are counsel of record to plaintiff Michael Zeleny (“Zeleny”). I
3 have personal knowledge of these facts. I could testify competently to them if called upon to do so.

4 2. We initially tried to take discovery of New Enterprise Associates, Inc. (“NEA”) in
5 mid-2018. The Court ordered that discovery not go forward until after the initial settlement
6 conference. I issued a subpoena to NEA in December 2018 and had it served on January 4, 2019.
7 NEA objected and moved to quash. On March 7, 2019, Magistrate Judge Hixson granted the motion
8 in part and denied it in part. He ordered NEA to produce its communications with the City of Menlo
9 Park about Zeleny. He also ordered NEA to produce a witness on three limited topics.

10 3. In addition, we issued discovery to the City of Menlo Park and Dave Bertini
11 (collectively, the “City”) relating to NEA’s involvement in the conduct underlying this case. The
12 City produced discovery and Chief Bertini sat of an initial session of his deposition in March. As a
13 result of the discovery concerning NEA, I requested that counsel for the other parties, the City and
14 Xavier Becerra (“Becerra”), agree to leave to amend to name NEA as a defendant.

15 4. Counsel for the City and Becerra graciously agreed to allow Zeleny to amend his
16 complaint to name NEA. We filed a stipulation to this effect on or around April 1, 2019, which the
17 Court granted.

18 5. All counsel appeared at a hearing on April 4, 2019. We discussed with the Court the
19 need to adjust the discovery schedule based on the addition of NEA. Based on my discussions with
20 counsel, it was my understanding that we were all in agreement that discovery should resume after
21 NEA had appeared and had a chance to participate so that we did not have to retake discovery to
22 allow NEA to participate. At that hearing, the Court indicated that it was inclined to modify the
23 discovery schedule, but not to continue trial until it was clear whether NEA would remain a party.

24 6. Following the hearing, all parties submitted a stipulation modifying the discovery
25 schedule. At that time, we budgeted approximately 90 days to address any pleading challenges by
26 NEA and complete the remaining discovery. The Court approved our stipulation. Its order doing so
27 is attached as **Exhibit 1**.

28 7. NEA moved to dismiss on May 9, 2019 based on two affirmative defenses. The

1 Court heard argument on June 13. NEA's motion remains under submission. We have also
2 requested leave to amend if the motion is granted.

3 8. On June 24, 2019, I emailed all counsel to address outstanding discovery scheduling
4 in light of NEA's motion. I received an automatic reply from Todd Master, counsel for the City,
5 indicating that he is away through July 8, 2019. As directed in Mr. Master's "out-of-office" email, I
6 contacted his assistant on June 28, 2019 to see whether anyone else at his firm could address
7 discovery issues. I have not yet received a response.

8 9. Counsel for defendants NEA and Becerra have agreed to a continuance as proposed
9 in this motion. A true copy of our email exchange in this regard is attached as **Exhibit 2**.

10 10. The continuance requested is the minimum I believe is necessary to allow us to
11 resolve any pleading issues, complete discovery, participate in dispositive-motion practice, and
12 prepare for trial. My co-counsel David Affeld and I are scheduled for trials in other matters on
13 September 9, 2019, November 8, 2019, December 3, 2019, and March 2020. In addition, counsel for
14 Becerra advised that she is scheduled for a month-long trial in March 2020.

15 I declare under penalty of perjury under the laws of the United States that the foregoing is
16 true and correct. Executed June 28, 2019 at Los Angeles, California

17 s/ Damion Robinson
18 Damion Robinson
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Attorneys for Plaintiff
Michael Zeleny

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

MICHAEL ZELENY,

Plaintiff,

vs.

EDMUND G. BROWN, Jr., *et al.*,

Defendants.

Case No. CV 17-7357 JCS

Assigned to:

The Honorable Richard G. Seeborg

Discovery Matters:

The Honorable Thomas S. Hixson

**[PROPOSED] ORDER APPROVING
STIPULATION TO CONTINUE
CERTAIN PRETRIAL DATES**

[Proposed Order filed concurrently]

Current Dates:

Discovery Cutoff: April 19, 2019

Expert Disclosures: May 17, 2019

Supplemental Experts: June 7, 2019

Expert Discovery Cutoff: July 12, 2019

Proposed Dates

Discovery Cutoff: July 19, 2019

Expert Disclosures: August 1, 2019

Supplemental Experts: August 22, 2019

Expert Discovery Cutoff: Sept. 12, 2019

Action Filed: December 28, 2017

Trial Date: November 18, 2019

1 The Court has considered the parties Stipulation to Continue Certain Pretrial Dates.
2 Based on the stipulation and the Court's discussion with counsel at the April 4, 2019 Status
3 Conference in this matter, and good cause appearing, the Court APPROVES the stipulation,
4 as follows:

5 1. The current deadlines for completion of fact discovery, initial disclosures of
6 expert witness, supplemental and rebuttal disclosures of expert witnesses, and completion of
7 expert discovery are hereby VACATED;

8 2. The Court SETS the following schedule for discovery:

- 9 a. Completion of fact discovery: July 19, 2019
10 b. Initial expert disclosures: August 1, 2019
11 c. Supplemental/rebuttal expert disclosures: August 22, 2019
12 d. Completion of expert discovery: September 12, 2019

13 3. All other dates and deadlines set forth in the Court's Scheduling Order remain
14 in effect, including the deadline for summary judgment hearings (September 12, 2019) and
15 the date of trial (November 18, 2019).

16 **It is So Ordered.**

17 Dated: 4/9/19



The Honorable Richard G. Seeborg
UNITED STATES DISTRICT COURT JUDGE
NORTHERN DISTRICT OF CALIFORNIA

Damion Robinson

From: Damion Robinson
Sent: Friday, June 28, 2019 2:37 PM
To: RLane@foley.com; Noreen Skelly; Todd H. Master
Subject: RE: Zeleny/Newsom - Motion to Continue Dates and Shorten Time for Hearing

Thank you. I will fix it in the motion and order.

-----Original Message-----

From: RLane@foley.com <RLane@foley.com>
Sent: Friday, June 28, 2019 2:33 PM
To: Noreen Skelly <Noreen.Skelly@doj.ca.gov>; Damion Robinson <DR@agzlaw.com>; Todd H. Master <tmaster@hrmrlaw.com>
Subject: RE: Zeleny/Newsom - Motion to Continue Dates and Shorten Time for Hearing

Sorry -- just caught that the last date should be 2020, not 2010

Sent from Workspace ONE Boxer

On Jun 28, 2019 4:22 PM, Damion Robinson <DR@agzlaw.com> wrote:
** EXTERNAL EMAIL MESSAGE **

Last email from me today. We need to update the pretrial conference as well. Here is the finished schedule.

Discovery Cut-Off:	November 15, 2019
Expert Disclosures:	November 29, 2019
Rebuttal Experts:	December 20, 2019
Expert Discovery Cut-Off:	January 10, 2020
Dispositive Motions:	February 6, 2020
Pre-trial Conference:	May 20, 2020
Start of Trial:	June 1, 2010

Could you both confirm?

-----Original Message-----

From: RLane@foley.com <RLane@foley.com>
Sent: Friday, June 28, 2019 12:45 PM
To: Noreen Skelly <Noreen.Skelly@doj.ca.gov>; Damion Robinson <DR@agzlaw.com>; Todd H. Master <tmaster@hrmrlaw.com>
Subject: RE: Zeleny/Newsom - Motion to Continue Dates and Shorten Time for Hearing

Yes, fine.

Sent from Workspace ONE Boxer

On Jun 28, 2019 3:43 PM, Damion Robinson <DR@agzlaw.com> wrote:
** EXTERNAL EMAIL MESSAGE **

That is absolutely fine with us.

How about June 1, 2020 for trial (the first available date after Memorial day), and February 6 for dispositive motions.

Roger, does that work for you?

-----Original Message-----

From: Noreen Skelly <Noreen.Skelly@doj.ca.gov>

Sent: Friday, June 28, 2019 12:40 PM

To: Damion Robinson <DR@agzlaw.com>; RLane@foley.com; Todd H. Master <tmaster@hmrmlaw.com>

Subject: RE: Zeleny/Newsom - Motion to Continue Dates and Shorten Time for Hearing

Damion,

I'm willing to work with you to amend the schedule. However, I'm unavailable December 9th-25th, and I have a month-long trial beginning March 31, 2020. Thus, I would like to push out the deadline for hearing dispositive motions and trial date. I would suggest the deadline for dispositive motions be pushed to early February and trial be pushed to late May. I don't know whether those proposed changes will work for everyone else.

Noreen

Noreen P. Skelly, Deputy Attorney General Government Law Section California Department of Justice, Office of the Attorney General

Telephone: (916) 210-6057

-----Original Message-----

From: Damion Robinson <DR@agzlaw.com>

Sent: Friday, June 28, 2019 12:21 PM

To: RLane@foley.com; Noreen Skelly <Noreen.Skelly@doj.ca.gov>; Todd H. Master <tmaster@hmrmlaw.com>

Subject: RE: Zeleny/Newsom - Motion to Continue Dates and Shorten Time for Hearing

Thank you. So that everyone is aware this is the schedule we're currently proposing. I assume the Court will adjust it to fit the Court's schedule.

Discovery Cut-Off:	November 15, 2019
Expert Disclosures:	November 29, 2019
Rebuttal Experts:	December 20, 2019
Expert Discovery Cut-Off:	January 10, 2020
Dispositive Motions:	January 10, 2020
Pre-trial Conference:	March 4, 2020
Start of Trial:	March 16, 2020

Because Todd is on vacation, we'll need to make a motion. But, can we indicate everyone else's agreement to the above and to shortening time?

Thanks

-----Original Message-----

From: RLane@foley.com <RLane@foley.com>

Sent: Friday, June 28, 2019 12:14 PM

To: Noreen Skelly <Noreen.Skelly@doj.ca.gov>; Damion Robinson <DR@agzlaw.com>; Todd H. Master <tmaster@hrmrlaw.com>

Subject: RE: Zeleny/Newsom - Motion to Continue Dates and Shorten Time for Hearing

Both.

Sent from Workspace ONE Boxer

On Jun 28, 2019 3:11 PM, Damion Robinson <DR@agzlaw.com> wrote:

** EXTERNAL EMAIL MESSAGE **

Roger:

Are you agreeing to the 120 day extension, to shortening time on a motion to continue, or to both?

Regards,

-----Original Message-----

From: RLane@foley.com <RLane@foley.com>

Sent: Friday, June 28, 2019 12:10 PM

To: Noreen Skelly <Noreen.Skelly@doj.ca.gov>; Damion Robinson <DR@agzlaw.com>; Todd H. Master <tmaster@hrmrlaw.com>

Subject: Zeleny/Newsom - Motion to Continue Dates and Shorten Time for Hearing

I can assent to that. Thank you.

Sent from Workspace ONE Boxer

On Jun 28, 2019 3:07 PM, Damion Robinson <DR@agzlaw.com> wrote:

** EXTERNAL EMAIL MESSAGE **

Counsel:

We have attempted to informally resolve the discovery scheduling issues due to the uncertainty surrounding NEA's status. We have been unable to reach consensus or to determine everyone's position due to Mr. Master being out of town until July 8 and NEA declining to take a position.

Accordingly, we are planning to file today a motion to continue the current schedule by 120 days, and a motion to shorten time so that the continuance motion is heard on July 8. We are requesting that any oppositions be filed by July 5.

Please let me know your position on the two motions. In particular, we need to know whether you will oppose shortening time. As the current discovery cutoff is July 19, we do not see an option but to request an expedited ruling.

Regards,

Damion Robinson

Affeld Grivakes LLP

2049 Century Park East, Suite 2460

Los Angeles, CA 90067

Tel. (310) 979-8700 | Fax (310) 979-8701

* * *

PROOF OF SERVICE

I hereby certify that on June 28, 2019, I electronically filed the foregoing document using the Court's CM/ECF system. I am informed and believe that the CM/ECF system will send a notice of electronic filing to the interested parties.

s/ Damion Robinson
Damion Robinson